

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO.702/1996
(Kishan Raj Mathur Vs. Khoom Singh)

Date of order : 22.11.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. M.R. Singhvi, for the petitioner.
Mr. S.N. Tiwari, Dy. Govt. Advocate.

By way of filing this writ petition, the petitioner has challenged the memorandum of charge-sheet dated 13.7.1995 (Annexure-5) so also has prayed for direction to the respondents that they shall act upon the recommendations of the Departmental Promotion committee for the year 1994-95 for the posts of Executive Engineers and if petitioner is found suitable, to promote him on substantive basis as Executive Engineer from a date when a person junior to him was so promoted, with all consequential benefits including pay fixation, experience, seniority further promotion etc.

The petitioner has raised so many grounds in the writ petition including the ground that the date on which the vacancy of the Executive Engineers was determined, which is 1st April, 1994, there was no pendency of any disciplinary proceedings against him

but at the time of consideration of his case for promotion to the post of Executive Engineer against the vacancy of year 1994-95 in the year 1996, his case was considered by the D.P.C. but recommendations were kept in sealed cover on the ground that enquiry was pending against him in pursuance of the memorandum of charge-sheet dated 13.7.1995.

According to the petitioner as per the judgment rendered by Hon'ble Supreme Court in case of Union of India & Ors. Vs. N.. Banerjee & Ors., reported in (1997) 9 SCC 287, there was no question of denying promotion to the petitioner on the basis of subsequent charge-sheet issued on 13.7.1995, which was not in existence on the date when vacancy occurred and the petitioner was within the consideration zone.

In reply, it is specifically mentioned by the respondents in para No.10 that the Departmental Promotion Committee had already considered the case of the petitioner for promotion to the post of Executive Engineer but due to pendency of departmental enquiry in pursuance of the charge-sheet dated 13.7.1995, the recommendations of the DPC have been kept in sealed cover and it cannot be opened prior to conclusion of the departmental enquiry. It is further submitted that this procedure has been adopted by the Department on the basis of the judgment of Hon'ble Supreme Court given in number of cases.

Today, learned Dy. Govt. Advocate by way of producing photo-stat copy of order dated 6.3.2006 issued by Department of Personnel submitted that the petitioner has already been exonerated in the said enquiry. Therefore, the prayer for quashing the memo of charge-sheet dated 13.7.1995 does not survive and it is contended that now the recommendations of the Departmental Promotion Committee for promotion to the posts of Executive Engineer will be opened, which is kept in sealed cover.

In these circumstances, this writ petition is disposed of with direction to the respondents that in view of the fact that the enquiry against the petitioner, which was said to pending at the time of consideration of his case for promotion to the post of Executive Engineer has finally been concluded vide order dated 6.3.2006, therefore, the sealed envelop of recommendations of Departmental Promotion Committee for promotion be opened within a period of two months and if the petitioner is found suitable for promotion, then, he may be granted all consequential benefits as granted to similarly situated persons.

(GOPAL KRISHAN VYAS), J.